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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)

Implementation of Sections 3(n) and)
332 of the Communications Act)

Regulatory Treatment of Mobile)
Services)

GEN Docket No. 93-252

To: The Commission

**JOINT REPLY COMMENTS OF AIRTOUCH PAGING
AND ARCH COMMUNICATIONS GROUP, INC.**

AirTouch Paging ("AirTouch") and Arch Communications Group, Inc. ("Arch"), by their attorneys, hereby submit their joint reply comments in response to the Further Notice of Proposed Rulemaking, FCC 94-100, released May 20, 1994 (the "Further Notice") in the captioned proceeding. The following is respectfully shown:

**I. The Record Contains Substantial Support
for Many of the Changes Proposed by the Commission**

1. In their joint comments filed June 20, 1994,^{1/} AirTouch and Arch generally supported most of the rule changes proposed by the Commission to resolve differences between technical and operational rules in Parts 22 and 90 of the

^{1/} See Joint Comments of AirTouch Paging and Arch Communications Group, Inc. on the Further Notice of Proposed Rulemaking filed June 20, 1994 (the "AirTouch/Arch Comments").

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Commission's rules. AirTouch and Arch have now reviewed the comments filed in the proceeding, and find that others are in general agreement as well with the thrust of the Commission's proposals. See, e.g., Comments of McCaw Cellular Communications, Inc.; Comments of the Personal Communications Industry Association; Comments of Metrocall, Inc.; Comments of Paging Network, Inc. These comments, all of which have been submitted by knowledgeable industry representatives, generally support the adoption of similar or identical technical and operational rules for comparable Part 90 and Part 22 services which have been found to be substantially similar. However, this support is tempered by a general perception that rule changes must not be allowed to interrupt the continued processing of applications in this dynamic sector of the wireless communications businesses.^{2/}

2. Except as noted in the following sections of this reply, the Commission may proceed with the proposed changes confident that it has the general support of industry members in this effort to create competitive parity.

II. The Adoption of a Unified Form Would be Premature

3. AirTouch and Arch believe that the Commission should adopt a single unified application form in the future that can be used by all commercial mobile radio service ("CMRS") applicants. However, they strenuously urge the Commission to defer the adoption of a new form until the transitional rules are

^{2/} For example, commenters generally agree that the recently adopted procedures for PCP exclusivity applications should not be revisited at this time.

in place.^{3/} The conclusion that it would be premature to adopt a unified form at this time is echoed throughout the comments of other parties.

4. For example, McCaw Cellular Communications believes that the specific form appended to the Further Notice requires further review, discussion and modification. As a result, McCaw urges the Commission to defer action on the form until after the transition rules are in place. Likewise, the Personal Communications Industry Association ("PCIA") suggests that it may be more appropriate to address the actual content of any such form after the technical rules in the parity proceeding are completed.^{4/} In addition, the American Mobile Telecommunications Association ("AMTA") indicates that it needs additional time to evaluate the advantages and drawbacks of the proposed form.^{5/}

5. Based upon this sampling of comments, AirTouch and Arch reiterate their request that the Commission defer action upon the adoption of a modified form at this stage of the proceeding. The ability of interested parties to focus on the new form, and the quality of comments the Commission receives, will increase dramatically after the initial transitional rules are in place.

^{3/} AirTouch/Arch Comments, paragraph 4(f).

^{4/} Comments of the Personal Communications Industry Association, pp. 21-23.

^{5/} NABER went ahead and commented on the proposed form, and its lengthy comments indicate that the Commission is a long way from closure on this issue.

III. The Commission's Construction Requirements Require Modification

6. The comments in this proceeding highlight two areas of potential concern regarding the Commission's proposed construction requirements. First, many parties are concerned that the Commission definition of construction, which includes placing a minimum of two units in service in the hands of the public, is unduly restrictive. Second, in the area of pre-grant operations, several parties have decried the Commission's unwillingness to maintain for CMRS applicants the ability to place uncontested facilities in service pursuant to a "special temporary authorization" procedure like that permitted in the private services today. AirTouch and Arch share these concerns.

7. CellPage considers the Commission's "two person" rule to be unnecessary and unwise. Now that the Commission has implemented new annual user fees, spectrum auctions, licensing fees, and a possible finder's preference procedure, there need be no continuing concern over the "warehousing" of spectrum.^{6/} McCaw also argues against the "two person" rule, and asks the Commission to recognize that "a system may be ready for use without yet having had potential subscribers seek to obtain service".^{7/} NABER also is concerned that a licensee may be unable to obtain any immediate external customers, either due to marketplace conditions or because the commercial rollout of a system is being deferred pending completion of the installation

^{6/} Comments of CellPage, Inc., pp. 15-17; accord, Comments of Metrocall, Inc., pp. 16-18.

^{7/} Comments of McCaw, p. 28.

of a complex wide-area network. PCIA also urges the Commission to redefine how licensees are to demonstrate the availability of service to the public.^{8/}

8. Based upon these recurring concerns, AirTouch and Arch support PCIA's proposal that the Commission allow a licensee to meet the construction requirement either by demonstrating that it is providing service to at least two unaffiliated parties, or by demonstrating that they are interconnected to the public switch telephone network and thus available for public service.

9. A similar industry consensus appears to be emerging on the need for the Commission to allow CMRS applicants to commence operation pursuant to a temporary authorization. Both AirTouch and Arch attested to the substantial public interest benefit of allowing pre-grant operations under current Part 90 procedures.^{9/} CTIA also urges the Commission to adopt rules that would enable CMRS applicants to initiate operation of their facilities on an accelerated basis.^{10/} NABER, too, strenuously advocates that "there is no reason why the [CMRS] applicants should not be permitted to operate on a conditional basis".^{11/} NABER concludes that the Commission has sufficient discretion under Section 309(f) of the Communications Act to permit temporary operation for CMRS applicants.

^{8/} PCIA Comments, pp. 15-16.

^{9/} AirTouch/Arch Comments, paragraph 6 (k).

^{10/} CTIA Comments, pp. 5-6.

^{11/} NABER Comments, p. 45.

10. It would be unfortunate if the laudable objective of regulatory parity was allowed to undermine continued use of expedited licensing procedures that serve to make services available to the public at an earlier date. AirTouch and Arch urge the Commission to give substantial weight to the comments of those who have argued for the retention of a conditional licensing or a special temporary licensing mechanism to permit the prompt implementation of uncontested facilities.

IV. The Commission Proposal to Increase Fees Should be Revisited

11. In their comments, AirTouch and Arch expressed concern that the proposal to conform Part 90 fees to the Part 22 fee levels represented a substantial and potentially unjustified fee increase.^{12/} Other parties who addressed this issue are virtually unanimous in their view that such a fee increase cannot be justified. For example, PageMart considers the proposed fee increase to be "arbitrary".^{13/} Since the goal of the regulatory parity proceeding is to streamline application procedures, it would make sense to PageMart to adopt lower rather than higher uniform fees. PCC Management Corp. argues that the Commission is without authority to propose the fee increase it is suggesting. Since Section 6002(d)(3) of the Budget Act requires only that the Commission adopt "technical requirements" that are comparable, PCC Management Corp. argues that this statutory mandate does not

^{12/} AirTouch/Arch Comments, para. 5.g.

^{13/} PageMart Comments, pp. 11-12.

extend to the imposition of dramatically higher fees.^{14/} AMTA, PCIA and NABER all properly point out that the Commission's fee schedule was intended to be based upon the costs associated with processing an application. The proposal to conform all fees to the higher pre-existing common carrier fee schedule appears inconsistent with this concept.

12. In view of these comments, the Commission should go slow on the imposition of a new fee schedule which would represent so dramatic an increase in the fees to be paid by Part 90 applicants. Perhaps the best approach is to defer altering fees pending the outcome of further proceedings to determine what fee would be appropriate after the licensing scheme for CMRS is more fully established.

V. Market Wide Licensing is Needed

13. AirTouch and Arch both supported the use of wide-area market licensing for 900 MHz paging.^{15/} This position also was adopted by other knowledgeable industry representatives. For example, PCIA finds it to be "imperative" for the Commission to adopt market area licensing for paging on an expedited basis.^{16/} PageNet also considers the adoption of Commission defined market

^{14/} PCC Management Corp. Comments, p. 11.

^{15/} AirTouch/Arch Comments, p. 9.

^{16/} PCIA Comments, pp. 10-11.

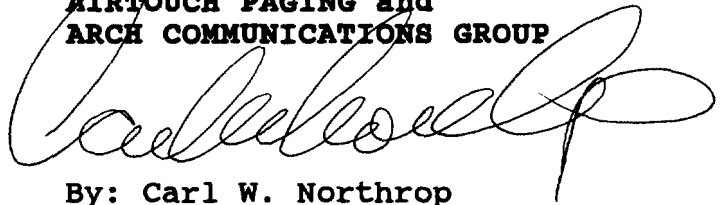
area licensing for both Parts 22 and 90 to be essential to creating a stable and predictable licensing environment.^{17/}

VI. CONCLUSION

14. Based upon the foregoing, AirTouch and Arch respectfully request that the final orders in this proceeding reflect the comments of AirTouch and Arch which, it appears, enjoy substantial support by other interested parties.

Respectfully submitted,

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^{17/} PageNet Comments, pp. 14-16. PageNet also supports first-come, first-serve licensing, which AirTouch and Arch oppose on the ground that such a scheme would empower strike applicants, and encourage carriers to overbuild.

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that I have this 11th day of July, 1994, caused copies of the foregoing **Joint Reply Comments of AirTouch Paging and Arch Communications Group, Inc.** to be delivered by hand, courier charges prepaid, and by first class mail, postage prepaid, to the following:

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